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10	BEFORE THE		
11	BOARD OF REGISTERED NURSING DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
12			
13		Case No. 2010 - 648	
14	In the Matter of the Accusation Against:	Case No. 1010 0	
15	KEVIN RAYMOND REILLY 3050 Lynde Street	·	
16	Oakland, CA 94601 Registered Nurse License No. RN 489392	ACCUSATION	
17	Respondent.		
18			
19	Complainant alleges:		
20	<u>PARTIES</u>		
21	1. Louise R. Bailey, M.Ed., R.N. (Complainant) brings this Accusation solely in her		
22	official capacity as the Interim Executive Officer of the Board of Registered Nursing.		
23	2. On or about March 31, 1993, the Board of Registered Nursing issued Registered		
24	Nurse License Number RN 489392 to Kevin Raymond Reilly (Respondent). The Registered		
25	Nurse License was in full force and effect at all times relevant to the charges brought here and		
26	will expire on March 31, 2011, unless renewed.		
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#### **JURISDICTION**

- 3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.
- 4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.
- 5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

#### **STATUTORY PROVISIONS**

6. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

- "(a) Unprofessional conduct, which includes, but is not limited to, the following:
- "(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.
- "(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof."
  - 7. Section 2762 of the Code states:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

 "(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

- "(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof."
- 8. Section 490 of the Code provides, in pertinent part, that a Board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.
  - 9. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question."

10. Title 16, California Code of Regulations, section 1444 states, in pertinent part:

"A conviction or act shall be considered to be substantially related to the qualifications, functions, or duties of a registered nurse if to a substantial degree it evidences the present or

potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare ..."

#### COST RECOVERY

Section 125.3 of the Code provides, in pertinent part, that the Board may request the 11. administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case.

#### DRUGS

"Morphine", is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(M) and is a dangerous drug as defined in Business and Professions Code section 4022.

#### FIRST CAUSE FOR DISCIPLINE

#### (Gross Negligence)

Respondent has subjected his license to disciplinary action under section 2761, subdivision (a)(1), on the ground of unprofessional conduct (gross negligence) in that on or about January 28, 2007, while employed as a registered nurse at the Alameda Hospital Skilled Nursing Facility, in Alameda, California, Respondent admittedly admininistered 20 mg/ml of Morphine to a seventy-one year old hospice patient at 9:15 a.m. and 2:00 p.m., when the physician's order provided that the patient receive 10 mg/ml of Morphine every four hours. The patient died shortly after the administration of the second dose of morphine.

### SECOND CAUSE FOR DISCIPLINE

#### (Incompetence)

Respondent has subjected his license to discipline under section 2761, subdivision (a)(1), on the ground of incompetence based on the conduct set forth in paragraph 13, above.

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<sup>1</sup> The patient's name will be released to Respondent pursuant to a request for discovery.

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#### THIRD CAUSE FOR DISCIPLINE

#### (Unprofessional Conduct)

15. Respondent has subjected his license to discipline under section 2761, subdivision (a), on the ground of general unprofessional conduct based on the conduct set forth in paragraph 13, above.

#### FOURTH CAUSE FOR DISCIPLINE

#### (Conviction of Substantially Related Crime)

16. Respondent has subjected his license to disciplinary action under Code section 2761, subdivision (f) and 490 in that he was convicted of a crime substantially related to the duties, qualifications, and functions of a registered nurse. Specifically, on or about August 21, 2009, in Napa County Superior Court, Case No. CR147612, Respondent was convicted by his guilty plea of violating Vehicle Code section 23152, subdivision (b) (driving while having a 0.08% or higher blood alcohol level). Pursuant to the conviction, Respondent served two days in jail and was placed on probation for 5 years on terms and conditions which included successful completion of a three month Drinking Driver Program. The factual circumstance underlying the conviction is that on or about July 26, 2009, Respondent drove a vehicle while having a 0.08% or higher, blood alcohol content.

## FIFTH CAUSE FOR DISCIPLINE

## (Conviction of a Crime Involving Alcohol)

17. Respondent has subjected his license to disciplinary action under Code section 2761, subdivision (a) on the ground of unprofessional conduct, as defined in Code section 2762 subdivision (c), in that on or about August 21, 2009, Respondent was convicted of a crime involving the consumption of alcoholic beverages, as set forth above in paragraph 16.

## SIXTH CAUSE FOR DISCIPLINE

## (Use of Alcohol to a Dangerous Extent)

18. Respondent has subjected his license to disciplinary action under Code section 2761, subdivision (a) on the ground of unprofessional conduct, as defined in Code section 2762

1	subdivision (b), in that on or about July 26, 2009, Respondent used alcoholic beverages to an		
2	extent dangerous or injurious to himself and others, as set forth above in paragraph 16.		
3	<u>PRAYER</u>		
4	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,		
5	and that following the hearing, the Board of Registered Nursing issue a decision:		
6	1. Revoking or suspending Registered Nurse License Number RN 489392, issued to		
7	Kevin Raymond Reilly.		
8	2. Ordering Kevin Raymond Reilly to pay the Board of Registered Nursing the		
9	reasonable costs of the investigation and enforcement of this case, pursuant to Business and		
10	Professions Code section 125.3;		
11	3. Taking such other and further action as deemed necessary and proper.		
12	DATED: 6/17/10 Zouse L. Sailer, LOUISE R. BAILEY, M.ED., R.N. Interim Executive Officer		
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15	Complainant		
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